

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Operating Engineers Local #49 Health and  
Welfare Fund, Central Pension Fund of the  
International Union of Operating Engineers and  
Participating Employers, Local #49 International Union  
Of Operating Engineers and Associated General  
Contractors of Minnesota Apprenticeship and  
Training Program and their Trustees,

Case No. 07-cv-4820 (RHK/AJB)

Plaintiffs,

v.

A.B. Environmental Corporation,

Defendant.

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**FINDINGS OF FACT,  
CONCLUSION OF LAW AND  
ORDER FOR JUDGMENT**

This matter was heard before the undersigned on April 16, 2009. Amy L. Court of McGrann Shea Carnival Straughn & Lamb, Chartered, appeared for and on behalf of the Plaintiffs. There was no appearance on behalf of the Defendant.

**FINDINGS OF FACT**

1. Plaintiffs filed a Summons and Complaint in this matter on December 13, 2007. Defendant was served with the Summons and Complaint in this matter on February 22, 2008.

2. Defendant failed to file and serve a response or Answer to the Summons and Complaint.

3. Plaintiffs filed an Application for Entry of Default on June 26, 2008 and the Clerk entered default on August 20, 2008.

4. Plaintiffs are trustees and fiduciaries of the above-referenced funds (hereinafter "Funds"). The Funds are multi-employer plans as defined by 29 U.S.C. § 1002(37). They are established to provide, *inter-alia*, pension, health and welfare, vacation, and training benefits to employees doing work in the construction trades, and are maintained for the benefit of workers pursuant to a Collective Bargaining Agreement.

5. At all times material herein, Defendant was bound by a Collective Bargaining Agreement between the Highway, Railroad, and Heavy Construction Division of the Associated General Contractors of Minnesota and the International Union of Operating Engineers, Local No. 49.

6. The Collective Bargaining Agreement obligates Defendant, as an employer, to compute the contributions due for each employee in a given month, to submit that information to the Funds' agent on a report form, and to pay those contributions to the Funds' Agent on or before the 15th day of the month following the month for which the contributions are being made.

7. Defendant breached the terms of the Collective Bargaining Agreement by failing to timely remit the fringe benefit report forms and contributions due pursuant to those reports for the period of July, 2007 through December, 2008.

8. After the filing and service of the Complaint and after this Court issued an Order to Show Cause, Defendant untimely submitted the fringe fund reports for the period of July, 2007 through December, 2008, but did not submit payment for the contributions due and owing for this period.

9. The amount due for fringe benefit contributions for the period of July, 2007 through December, 2008 is \$19,154.42.

10. Pursuant to the Collective Bargaining Agreement, liquidated damages of 15% of the contributions are assessed on all delinquent fringe benefit contributions.

11. Liquidated damages of \$2,873.16 are due and owing for the period July, 2007 through December, 2008.

12. The Collective Bargaining Agreement provides that Plaintiffs are entitled to their reasonable attorney fees and costs of this action.

13. The Plaintiffs have incurred attorneys' fees and costs of \$2,184.18 in pursuing this delinquency.

### **CONCLUSIONS OF LAW**

1. Defendant is in default, and Plaintiffs are entitled to Entry of a Money Judgment.

2. Defendant owes Plaintiffs \$19,154.42 for delinquent fringe benefit contributions for the period July, 2007 through December, 2008.

3. Defendant owes Plaintiffs \$2,873.16 for liquidated damages for the period July, 2007 through December, 2008.

4. Defendant owes Plaintiffs \$2,184.18 for attorneys' fees and costs.

**ORDER**

**IT IS ORDERED:**

1. That Plaintiffs' Motion for Entry of a Money Judgment is **GRANTED**.
2. That judgment in the amount of \$24,211.76 shall be entered against Defendant A.B. Environmental Corporation and in favor of the Plaintiffs.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Date: April 16, 2009

BY THE COURT:

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge